

STATE AID TO PRIVATE SCHOOLS

CONSTITUTIONAL PROVISIONS

STATUTES

COURT DECISIONS

Research Division
NATIONAL EDUCATION ASSOCIATION OF THE UNITED STATES
1201 Sixteenth Street, Northwest
Washington, D. C.

May 1943

15 cents

CLASS NAME

ST

PRIMA SCHOOL

PRIMA SCHOOL

CONTENTS

	Page
Introduction	4
Part I - Constitutional Prohibitions Against State Aid to Private Schools .	5
Part II - Abstracts of Recent Cases	20
On Use of Parochial Schools for Public-School Purposes	20
On Wearing of Religious Garb by Public-School Teachers	20
On Transportation of Pupils Attending Private Schools	21
On Free Textbooks for Pupils Attending Private Schools	22
Part III - Tax Exemption for Private Schools	24

18043
g.
Beau T.E. Beunen

INTRODUCTION

The present report is an attempt to list constitutional provisions directly or indirectly permitting or prohibiting state aid to private schools and the court decisions which have interpreted these provisions.

Part I lists state-by-state the constitutional prohibitions against aid to private schools. Following the constitutional provisions are listed in each state the judicial decisions, briefly annotated. These court decisions have interpreted these provisions when situations have arisen which have been challenged as violating the prohibitions. The older cases deal with direct aid by way of paying the salaries of teachers in private schools or using private-school buildings for public-school classes. Seldom do such cases occur in recent years, altho there was an Iowa case in 1940. Nowadays the more common issues are transportation and textbooks authorized by statutes which permit the extension of these services to pupils attending private schools.

Part II consists of abstracts of recent cases. In these abstracts the reasoning of the court is quoted at length so that the reader may ascertain the basis for the approval or disapproval by the courts of the aid in question. For example, availability of transportation and textbooks to pupils in attendance at private schools has been considered aid to private schools by some courts and, therefore, unconstitutional. Other courts have reasoned that the availability of these services to private-school pupils is not aid to the schools but aid to pupils of the state so that denial of such aid to children on the ground of their attendance at private schools would be a denial of the equal protection of the laws.

In Part III of the report are listed the state-by-state constitutional and statutory provisions regarding exemption of private schools from taxation. Some persons are of the opinion that exemption from taxation is an indirect aid to private schools, but the policy of fostering education in general was so strong in the early days when the first state constitutions were framed that almost every state adopted this provision. This sort of aid to private schools is, therefore, sanctioned by constitutional provisions. The court decisions are not listed in this part of the report, being too numerous to mention, and dealing primarily with the type of institution which is entitled to the exemption.

The actual extent of aid to private and sectarian schools at present is unknown. According to data collected in the spring of 1939 from the various state departments of education, only three states provided textbooks for private-school pupils. These states are Illinois where children in parochial schools may use free textbooks as in a public library; Louisiana where books and supplies are provided out of the State Severance Tax Fund; and New Mexico.

Free transportation for pupils attending private schools is more common: Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, New Hampshire, Oregon, and New York reported such aid in 1939, but the New York law has since been declared unconstitutional. A number of these states report "in certain circumstances only." Washington and Wyoming also reported that altho there was no statutory or official sanction for free transportation of private-school pupils, some private-school pupils do ride in public-school buses.

Other assistance now given to private and sectarian schools takes the form of aid thru scholarships and land grants. In some of the New England states, private academies serve as public high schools and receive state aid at least for certain courses. In other states certain private schools receive part of the state and federal aid for vocational education. These special situations are not covered in the present report.

ALABAMA

Constitution of 1901, as amended:

Article XIV, Sec. 263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

ARIZONA

Constitution of 1912, as amended:

Article IX, Sec. 10. No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.

ARKANSAS

Constitution of 1874, as amended:

Article XIV, Sec. 2. No money or property belonging to the public-school fund, or to this State for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

Amendment No. 11. (providing for support of common schools by taxation)
Provided, further, that no such tax shall be appropriated for any other purpose nor to any other district than that for which it is levied.

CALIFORNIA

Constitution of 1879, as amended:

Article IX, Sec. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools....

Article IV, Sec. 30. Neither the legislature, nor any county, city...shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever, nor shall any grant or donation of personal property or real estate ever be made by the State, or any city...for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the legislature granting aid pursuant to section 22 of this Article.

COLORADO

Constitution of 1876, as amended:

Article IX, Sec. 7. Neither the General Assembly, nor any county, city...or other public corporation shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatsoever....

CONNECTICUT

Constitution of 1818, as amended:

Article VIII, Sec. 2. The fund, called the School Fund shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools, thruout the state, and for the equal benefit of all the people thereof.

DELAWARE

Constitution of 1897, as amended:

Article X, Sec. 4. No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools.

Article X, Sec. 3. No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school.

Judicial decisions:

State ex rel. Traub et al. v. Brown et al. 172 A. 835. (1934)

State appropriation for transportation of pupils to sectarian schools was declared unconstitutional.

GEORGIA

Constitution of 1877, as amended:

Article I, Sec. 1, Par. xiv. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or of any sectarian institution.

Article VII, Sec. XVI, Par. 1. The General Assembly shall not by vote, resolution, or order grant any donation or gratuity in favor of any person, corporation, or association.

IDAHO

Constitution of 1890, as amended:

Article IX, Sec. 5. Neither the legislature nor any county...or other public corporation, shall ever make any appropriation or pay from any public fund or moneys whatever, anything in aid of...or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever....

ILLINOIS

Constitution of 1870, as amended:

Article VII, Sec. 3. Neither the General Assembly nor any county, city...or other public corporation shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution controlled by any church or sectarian denomination whatever....

Judicial decisions:

People v. McAdams, 82 Ill. 356. (1848)

A private charitable school cannot be authorized by the state legislature to levy tax for its support.

Millard v. Board of Education 10 N.E. 669. (1887)

The rental of a church school for public-school purposes when necessity arises was upheld as valid.

Cook County v. Chicago Industrial School for Girls 18 N.E. 183. (1888)

Direct aid to sectarian school was declared unconstitutional.

Cook County v. Chicago Industrial School for Girls 117 N.E. 735. (1917)

Payments to sectarian school were sustained as valid.

INDIANA

Constitution of 1851, as amended:

Article I, Sec. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

Article VIII, Sec. 3. The principal of the Common School Fund shall remain a perpetual fund...and the income thereof shall be inviolably appropriated to the support of common schools and to no other purpose whatever.

Judicial decisions:

State ex rel. Johnson v. Boyd 28 N.E. (2d) 256. (1940)

Use of parochial school building and equipment for public-school pupils and payment of nuns as public-school teachers was upheld.

Constitution of 1857, as amended:

Article I, Sec. 3. The General Assembly shall make no law respecting an establishment of religion; or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

Judicial decisions:

Scripture v. Burns 12 N.W. 760. (1882)

Rental of a church or sectarian school for public-school purposes when necessity arises was upheld.

Knowlton v. Baumhover 166 N.W. 202. (1918)

Use of parochial school building and teachers for public-school pupils was declared unconstitutional.

KANSAS

Constitution of 1861, as amended:

Article VI, Sec. 8. No religious sect or sects shall ever control any part of the common school or university funds of the State.

Judicial decisions:

Atchison Topeka and Santa Fe Railroad Company v. Atchison. 28 P 1000. (1892)

Taxes cannot be levied for private and sectarian institutions.

KENTUCKY

Constitution of 1891, as amended:

Sec. 189. No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to or used by, or in aid of, any church, sectarian or denominational school.

Judicial decisions:

Halbert v. Sparks 9 Bush. 259. (1872)

Contract of school district with private academy for attendance of public-school pupils was invalid.

Underwood v. Wood. 19 S.W. 405. (1892)

Legislature may not exempt from taxation parents of pupils attending private institution, nor divert public funds in aid of such private school.

Williams et al. v. Board of Trustees, Stanton Common School District. 191 S.W. 507. (1917)

School district may not contract with sectarian school for attendance of public-school pupils even if no funds are paid to the school but merely to the teachers.

Crain et al. v. Walker et al. 2 S.W. (2d) 654. (1928)

School district contract with sectarian school for attendance of public-school pupils was upheld and distinguished from the Williams case on details of the circumstances.

LOUISIANA

Constitution of 1921, as amended:

Article XII, Sec. 13. No public funds shall be used for the support of any private or sectarian school.

Article IV, Sec. 8. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such, and no preference shall ever be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship. No appropriation from the State treasury shall be made for private, charitable or benevolent purposes to any person or community.

Judicial decisions:

Bordon et al. v. Louisiana State Board of Education et al. 123 So. 655. (1929)
Free textbook act was upheld in its provisions for furnishing books to pupils in attendance at the parochial schools.

Cochran v. Louisiana Board of Education 123 So. 664; 281 U.S. 370. (1929)
On substantially the same facts as the Bordon case; decided on the same day and affirmed later by the United States Supreme Court.

MAINE

Constitution of 1820, 1876, as amended:

Article VII. A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require the several towns to make suitable provisions, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State; provided, that no donation, grant or endowment shall at any time be made by the Legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the Legislature of the State shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof.

MARYLAND

Constitution of 1867, as amended:

Article VII, Sec. 3. The school fund of the State shall be kept inviolate, and appropriated only to the purposes of education.

Judicial decisions:

Board of Education of Baltimore County v. Wheat 199 A. 628. (1938)
Transportation for pupils attending sectarian schools was upheld.

MASSACHUSETTS

Constitution of 1790, as amended:

Article XLVI, Amendment 2. ...and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the Commonwealth or any political division thereof for the purpose of founding, maintaining, or aiding ...any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public grants authorized by the Commonwealth or Federal authority or both....

Judicial decisions:

Barnes v. Falmouth 6 Mass. 401. (1810)

Massachusetts Constitution, until 1833, provided for the choice of a teacher with stated qualifications - a Protestant teacher of piety, religion and morality, of some incorporated religious society, elected by such society. This case came up because a teacher was appointed from an unincorporated religious society and so was not entitled to any part of the funds raised by the towns for educational purposes.

Jenkins v. Andover 103 Mass. 94. (1869)

Statute authorizing a town to levy tax for private school is unconstitutional.

In re Opinion of the Justices 102 N.E. 464. (1913)

Public money may be appropriated for higher educational institutions under sectarian control as the constitutional prohibition refers to sectarian schools teaching the same branches as in the public schools.

MICHIGAN

Constitution of 1909, as amended:

Article II, Sec. 3. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purpose.

MINNESOTA

Constitution of 1857, as amended:

Article VIII, Sec. 3. But in no case shall the moneys derived as aforesaid, or any portion thereof, or any public moneys or property, be appropriated or used for the support of schools, wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.

MISSISSIPPI

Constitution of 1890, as amended:

Article VIII, Sec. 208. No religious or other sect, or sects, shall ever control any part of the school or other educational funds of the State; nor shall any funds be appropriated toward the support of any sectarian school....

Judicial decisions:

Otken v. Lamkin 56 Miss. 758. (1879)

State aid on basis of inclusion of pupils attending sectarian schools is unconstitutional.

Chance et al. v. Mississippi State Textbook Rating and Purchasing Board et al. 200 So. 706. (1941)

Furnishing free textbooks to pupils in attendance at parochial schools was upheld.

MISSOURI

Constitution of 1875, as amended:

Article XI, Sec. 11. Neither the General Assembly nor any county, city...or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church, or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning, controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county...for any religious creed, church, or sectarian purpose whatever.

MONTANA

Constitution of 1889, as amended:

Article XI, Sec. 8. Neither the Legislative Assembly, nor any county, city...or other public corporation, shall ever make, directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

Article V, Sec. 35. No appropriation shall be made for charitable, industrial, educational, benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

NEBRASKA

Constitution of 1875, as amended:

Article VII, Sec. 11. Neither the State Legislature nor any county, city or other public corporation, shall ever make any appropriation from any public fund, or grant any public land in aid of any sectarian or denominational school or college, or any educational institution which is not exclusively owned and controlled by the State or a governmental subdivision thereof.

Judicial decisions:

State ex rel. Public School District No. 6 of Cedar County v. Taylor 240 N.W. 573. (1932)

State aid cannot be given to a district in which the only school is sectarian.

NEVADA

Constitution of 1864, as amended:

Article XI, Sec. 10. No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes.

Judicial decisions:

State ex rel. Nevada Orphan Asylum v. Hallock 16 Nev. 373. (1882)

Public funds cannot be used in aid of a school connected with a charitable sectarian orphan asylum.

NEW HAMPSHIRE

Constitution of 1784, as amended:

Part II, Article 8, Sec. 83. Knowledge and learning...being essential to the preservation of free government...it shall be the duty of the Legislators...to cherish ...all seminaries and public schools; to encourage private and public institutions.... Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.

Judicial decisions:

Holt v. Town of Antrim 9 A 389. (1887)

Statute authorizing a tax for a school building to be perpetually leased to an academy implies that all conditions necessary to give validity to the statute and lease will be met; mere exaction of tuition will not make the school private.

NEW JERSEY

Constitution of 1844, as amended:

Article IV, Sec. 7. The fund for the support of free schools...shall...remain a perpetual fund; and the income thereof shall be annually appropriated to the support of public free schools...and it shall not be competent for the Legislature to borrow, appropriate or use the said fund or any part thereof, for any other purpose, under any pretense whatever.

NEW MEXICO

Constitution of 1912, as amended:

Article XII, Sec. 3. ...no part of the proceeds arising from the sale or disposal of any lands granted to the State by Congress, or any other funds appropriated, levied, or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, or college or university.

Article IV, Sec. 31. No appropriation shall be made for charitable, educational or other benevolent purpose to any person, corporation, association or community not under the absolute control of the State, but the Legislature may, in its discretion, make appropriations for the charitable institutions and hospitals for the maintenance of which annual appropriations were made by the Legislative Assembly of nineteen hundred and nine.

NEW YORK

Constitution of 1938, as amended:

Article XI, Sec. 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the Legislature may provide for the transportation of children to and from any school or institution of learning. (Formerly section 4, Article IX, former Constitution. Renumbered section 4 by Constitution of 1938 which added provision relating to transportation of pupils.)

Article XII, Sec. 4. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the State be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held, or which may hereafter be held by the State for educational purposes. (Formerly section 4, Article XI, former Constitution.)

Article VII, Sec. 8. Subject to the limitations on indebtedness and taxation, nothing in this Constitution contained shall prevent the Legislature from providing for the aid, care and support of the needy directly or through subdivisions of the State; or for the protection by insurance or otherwise, against the hazards of unemployment, sickness and old age; or for the education and support of the blind, the deaf, the dumb, the physically handicapped and juvenile delinquents as it may deem proper; or for health and welfare services for all children, either directly or through subdivisions of the State, including school districts; or for the aid, care and support of neglected and dependent children and of the needy sick through agencies and institutions authorized by the State Board of Social Welfare or other state department having the power of inspection thereof, by payments made on a per capita basis directly or through the subdivisions of the State. The enumeration of legislative powers in this paragraph shall not be taken to diminish any power of the legislature hitherto existing. (Formerly section 1, Article VII, former Constitution. Renumbered section 8 by Constitution of 1938 and revised by including provisions of section 9, Article VIII of former Constitution, relating to state aid for certain public welfare and educational purposes and by adding new provisions in last paragraph.)

NEW YORK (CONT.)

Article VIII, Sec. 1. No county, city...shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association; nor shall any county...give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking, but this provision shall not prevent a county from contracting indebtedness for the purpose of advancing to a town or school district, pursuant to law, the amount of unpaid taxes returned to it.

Subject to the limitations on indebtedness and taxation applying to any county... nothing in this constitution contained shall prevent a county, city or town from making such provision for the aid, care and support of the needy as may be authorized by law, nor prevent any such county, city or town from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions and of children placed in family homes by authorized agencies, whether under public or private control, or from providing health and welfare services for all children. Payments by counties, cities or towns to charitable, eleemosynary, correctional and reformatory institutions and agencies, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required, by the Legislature. No such payments shall be made for any person cared for by any such institution or agency, nor for a child placed in a family home, who is not received and retained therein pursuant to rules established by the State Board of Social Welfare or other state department having the power of inspection thereof. (Formerly section 10 in part, Article VIII, former Constitution. Renumbered section 1 by Constitution of 1938 which revised the section generally and added most of the provisions of the second paragraph.)

Judicial decisions:

People ex rel. Roman Catholic Orphan Asylum Society v. Board of Education 13 Barb. 400. (1851)

Catholic orphan asylum is not entitled to part of the common school fund.

Sargent v. Board of Education 76 Supreme Court, Appellate Division 588. (1902)
Payment of salaries of teachers in St. Mary's Boys Orphan Asylum was upheld; wearing of religious garb was held not to be sectarian instruction.

O'Connor v. Hendrick 77 N.E. 612. (1906)
Wearing of religious garb by public-school teachers was held to be a sectarian influence and state superintendent's order forbidding same was upheld.

Smith v. Donahue et al. 195 N.Y.S. 715. (1922)
Free textbooks law was held not to apply to pupils attending parochial schools.

People ex rel. Lewis v. Graves 219 N.Y.S. 189. (1929)
Excusing pupils for one hour a week to attend religious instruction is not using public property or money in aid of denominational schools.

Judd v. Board of Education of Union Free School District No. 2, Town of Hempstead, Nassau County. 15 N.E. (2d) 576. (1938)
Transportation of pupils of sectarian schools was unconstitutional, under former Constitution.

NORTH CAROLINA

Constitution of 1876, as amended:

Article IX, Sec. 4. The proceeds of all lands that have been or hereafter may be granted by the United States to this State...also all money, stocks, bonds, and other property now belonging to any State fund for purposes of education...shall be paid into the State Treasury, and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever.

NORTH DAKOTA

Constitution of 1889, as amended:

Article VIII, Sec. 152. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian school.

Judicial decisions:

Gerhardt v. Heid, 267 N.W. 127. (1936)

Wearing of religious garb by public-school teachers was upheld.

OHIO

Constitution of 1851, as amended:

Article VI, Sec. 2. ...no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

OKLAHOMA

Constitution of 1907, as amended:

Article II, Sec. 5. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any...sectarian institution as such.

Article XI, Sec. 5. ...and no part of the proceeds arising from the sale or disposal of any lands granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college, or university....

Judicial decisions:

Oklahoma Railway Company v. St. Joseph's Parochial School 127 P. 1087. (1912)

The constitutional prohibition against aid to public schools does not prevent the state from including in the franchise granted a railroad the provision that school tickets be furnished all pupils including those in attendance at parochial schools.

Gurney et al. v. Ferguson et al. 122 P (2d) 1002. (1941)

Statute providing for transportation of pupils attending parochial schools was declared unconstitutional.

OREGON

Constitution of 1859, as amended:

Article 1, Sec. 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution....

PENNSYLVANIA

Constitution of 1874, as amended:

Article X, Sec. 2. No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

Article III, Sec. 17. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

Article III, Sec. 18. No appropriation shall be made for charitable, educational, or benevolent purposes to any person or community nor to any denominational or sectarian institution, corporation, or association. Provided, that appropriations may be made for pensions....

Judicial decisions:

Hysong v. School District of Gallitzin Borough 50 A. 482. (1894)

Wearing of religious garb by public-school teachers was declared lawful.

Commonwealth v. Harr 78 A 68. (1910)

The statute (subsequent to previous case) prohibiting the wearing of religious garb or insignia by public-school teachers was upheld as valid.

RHODE ISLAND

Constitution of 1843, as amended:

Article XII, Sec. 2. The money which now is or which may hereafter be appropriated by law for the establishment of a permanent fund for the support of public schools, shall be securely invested, and remain a perpetual fund for that purpose.

SOUTH CAROLINA

Constitution of 1895, as amended:

Article XI, Sec. 9. The property or credit of the State of South Carolina, or of any county...or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used directly or indirectly in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

53
2232

National education association
of the United States--Research
division.

State aid to private schools...
Washington, 1943.

12 0 43

g. Dean T. E. Benner

1943 04 12

SOUTH DAKOTA

Constitution of 1889, as amended:

Article VIII, Sec. 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the State, or any county or municipality within the State...and no sectarian instruction shall be allowed in any school or institution aided or supported by the State.

Judicial decisions:

Synod of Dakota v. State 50 N.W. 632. (1891)

Pierre University was unable to collect for expenses in teacher-training program after having been designated as a teacher-training institution by the board of education because it was a sectarian school.

Hlebanja v. Brown 236 N.W. 296. (1931)

County superintendent acted illegally in ordering public school closed and directing that costs of sending children to other schools would be borne by the district. Parents who sent children to parochial school could not collect for costs.

TENNESSEE

Constitution of 1870, as amended:

Article XI, Sec. 12. ...no law shall be made authorizing said (common school) fund or any part thereof to be diverted to any other use than the support and encouragement of common schools.

Judicial decisions:

Swadley v. Haynes 41 S.W. 1066. (1897)

The rental of a church school for public-school purposes when necessity arises was upheld as valid.

TEXAS

Constitution of 1876, as amended:

Article VII, Sec. 5. ...the available school fund shall be applied annually to the support of the public free school. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school....

UTAH

Constitution of 1895, as amended:

Article X, Sec. 13. Neither the Legislature nor any county, city...or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part, by any church, sect or denomination whatever.

VIRGINIA

Constitution of 1902, as amended:

Article IX, Sec. 141. No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the state or some political subdivision thereof.

Judicial decisions:

Hall's Free School Trustees v. Horne 80 Va. 470. (1885)

Public funds cannot be given in aid of a school established by a charitable bequest and under the control of the trustees of the corporation.

WASHINGTON

Constitution of 1889, as amended:

Article IX, Sec. 4. All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

Judicial decision:

Newman v. Schlarb 50 P (2d) 36. (1935)

Public schools were defined as those established under the laws, usually regulated in matters of detail by local authorities in various districts, towns, or counties, and maintained at public expense by taxation and open without charge to children of all residents of town or other district.
(Quoted from Litchman v. Shannon 155 P. 783; 1916.)

WEST VIRGINIA

Constitution of 1872, as amended:

Altho there is no specific provision in the West Virginia Constitution, it has been reported by the State Department of Education that the provision requiring that the school fund be kept inviolately for public-school support is interpreted by the State as a prohibition against aid to private schools.

WISCONSIN

Constitution of 1848, as amended:

Article I, Sec. 18. ...nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

Judicial decisions:

Curtis's Adm'rs. v. Whipple 24 Wis. 350. (1869)

The Legislature cannot authorize a town to raise money for a private school.

Dorner v. School District No. 5. 118 N.W. 353. (1908)

The rental of a church school for public-school purposes when necessity arises was upheld as valid.

State ex rel. Van Straten v. Milquet 192 N.W. 392. (1923)

A transportation contract in which only two out of thirty pupils were attending the public schools was invalid.

WYOMING

Constitution of 1889, as amended:

Article VII, Sec. 8. ...nor shall any portion of any public-school fund ever be used to support or assist any private school, or any school, academy, seminary, college, or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever.

Article III, Sec. 36. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community and not under the absolute control of the State, nor to any denominational or sectarian institution or association.

PART II. - ABSTRACTS OF RECENT CASES

On use of parochial schools for public-school purposes

INDIANA

State ex rel. Johnson v. Boyd 28 N.E. (2d) 256.
 Supreme Court of Indiana, June 28, 1940.

During the depression the parochial schools were unable to open and the priests of the parish notified the schoolboard that 800 pupils would be sent to the public schools. Since the schoolboard had no room for these extra pupils, it contracted with the parish for the use of the parochial schools and their teachers. Taxpayers challenged the action of the schoolboard alleging that it was unconstitutional diversion of public funds.

The teachers were duly licensed to teach in the public schools altho they wore the religious garb. No law of Indiana prohibits this. Holy pictures on the walls of the schoolrooms were allowed to remain. No sectarian instruction was permitted. Such pictures do not constitute sectarian instruction.

"Whether these schools, during the period in question, were parochial or public schools is determined by their control. They were in charge of teachers employed by the board of trustees of said school city. The teachers were regularly licensed teachers under the laws of the state of Indiana. The course of study was that prescribed by the board of education. The schools were visited and supervised by the superintendent of city schools and the director of instruction of the city schools. The teachers were paid from the public funds. The space occupied by the schools was in the possession of the school city thru its employed teachers. It is our opinion that the board of school trustees of the said school city by their course of action did establish public schools in the buildings formerly occupied by the parochial schools and that the payment, by the various treasurers of the school city, to said teachers of salaries provided by their contracts of employment was valid."

On wearing of religious garb by public-school teachers

NORTH DAKOTA

Gerhardt v. Heid, 267 N.W. 127.
 Supreme Court of North Dakota, April 2, 1936.

To restrain the wearing of religious garb by four nuns in the public schools. The teachers did not wear their rosaries or any other visible religious insignia. The court said:

"We are all agreed that the wearing of the religious habit described in the evidence here does not convert the school into a sectarian school, or create sectarian control within the purview of the constitution. Such habit, it is true, proclaimed that the wearer's were members of a certain denominational organization but so would the wearing of the emblem of the Christian Endeavor Society or the Epworth League. The laws of the state do not prescribe the fashion of dress of the teachers in our schools. Whether it is wise or unwise to regulate the style of dress to be worn by teachers in our public schools or to inhibit the wearing of dress or insignia indicating religious belief is not a matter for the courts to determine. The limit of our inquiry is to determine whether what has been done infringes and violates the provisions of the constitution."

On transportation of pupils attending private schools

DELAWARE

State ex rel. Traub et al. v. Brown et al. 172 A. 835.
Superior Court of Delaware, New Castle. April 19, 1934.

Statute appropriating \$5000 for transportation of pupils attending schools supported by any church or religious society was declared to be unconstitutional. "We are of the opinion that to furnish free transportation to pupils attending sectarian schools, is to aid the schools. It helps build up, strengthen, and make successful the schools as organizations."

MARYLAND

Board of Education of Baltimore County v. Wheat 199 A 628.
Court of Appeals of Maryland, May 20, 1938.

Court granted mandamus to a Catholic parent who wished to compel schoolboard to transport child to parochial school. Board claimed the law ordering use of public-school bus for transportation of private-school pupils was an unconstitutional diversion of public-school funds. "School attendance is compulsory and attendance at private or parochial schools is a compliance with the law. It is in furtherance of a public function in seeing that all children attend some school and in doing so have protection from traffic hazards."

NEW YORK

Judd v. Board of Education of Union Free School District No. 2, Town of Hempstead, Nassau County. 15 N.E. (2) 576.
Court of Appeals of New York, May 24, 1938.

Sec. 4 of Article 9 of the state constitution forbids "use of property or credit or any public money, or authorize or permit either to be used, directly or indirectly in aid or maintenance, other than for examination or inspection, of any school or institution, of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught."

In 1936 the Education Law was amended so as to permit transportation for pupils of sectarian schools. The law was held to be unconstitutional "since the purpose of transportation is to promote interest of private school or religious or sectarian institution that controls it." Any contribution directly or indirectly made in aid of maintenance and support of any private or sectarian school out of public funds would be a violation of concept of complete separation of church and state in civil affairs and of spirit and mandate of constitution. a/

OKLAHOMA

Gurney et al. v. Ferguson et al. 122 P (2d) 1002.
Supreme Court of Oklahoma, December 2, 1941.
Rehearing denied March 10, 1942.

Statute of 1939 was declared unconstitutional by the court. It provided for transportation of pupils attending private or parochial schools along the route of the public-school bus. The act was declared to be in aid of a sectarian institution and therefore invalid.

a/ Constitution was subsequently amended so as to permit transportation of private-school pupils.

"It is urged that the present legislative act does not result in the use of public funds for the benefit or support of this sectarian institution or school 'as such,' that such benefit as flows from these acts accrues to the benefit of the individual child or to a group of children as distinguished from the school as an organization. That argument is not impressive.... It is true this use of public money and property aids the child, but it is no less true that practically every proper expenditure for school purposes aids the child.... If the cost of the bus and the maintenance and operation thereof was not in aid of the public schools, then expenditures therefor out of the school funds would be unauthorized and illegal.... If the maintenance and operation of the bus and the transportation of pupils is in aid of the public schools, then it would seem necessary to follow that when pupils of a parochial school are transported that such service would likewise be in aid of that school."

On free textbooks for pupils attending private schools

LOUISIANA

Borden et al. v. Louisiana State Board of Education et al. 123 So. 655. Supreme Court of Louisiana. On Motion to Dismiss, November 26, 1928. On the Merits, June 17, 1929. Rehearing denied July 8, 1929.

Free textbook act was attacked in taxpayers' suit as being unconstitutional. The act provides for free textbooks for the school children of the state and therefore is not restricted to distribution among public-school children. The statute was upheld.

"One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian, or even public school. The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made. True, these children attend some school, public or private, the latter, sectarian or nonsectarian, and that the books are to be furnished them for use, free of cost, whichever they attend. The schools, however, are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation because of them. The school children and the state alone are the beneficiaries. It is also true that the sectarian schools, which some of the children attend, instruct their pupils in religion, and books are used for that purpose, but one may search diligently the acts, tho without result, in an effort to find anything to the effect that it is the purpose of the state to furnish religious books for the use of such children. In fact, in view of the prohibitions in the constitution against the state's doing anything of that description, it would be legally impossible to interpret the statute as calling for any such action on the part of the state.... What the statutes contemplate is that the same books that are furnished children attending public schools shall be furnished children attending private schools. This is the only practical way of interpreting and executing the statutes, and this is what the state board of education is doing. Among these books, naturally, none is to be expected, adapted to religious instruction."

Decided the same day without opinion based on the opinion in the Borden case was Cochran v. Louisiana Board of Education (123 So. 664) which was taken to the U.S.S.C. (281 U.S. 370) where it was affirmed. Mr. Justice Hughes gave the opinion approving the above quotation from the Borden case and adding "Viewing the statute as having the effect thus attributed to it, we cannot doubt that the taxing power of the state is exerted for a public purpose. The legislation does not segregate private schools, or their pupils, as its beneficiaries or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded."

MISSISSIPPI

Chance et al. v. Mississippi State Textbook Rating and Purchasing Board et al. 200 So. 706.

Supreme Court of Mississippi, February 24, 1941.

State law provides for free textbooks to be loaned to the pupils in all qualified elementary schools located in the state. Suit is by taxpayers to enjoin the textbook board from providing textbooks to pupils in private and sectarian schools.

"The religion to which children of school age adhere is not subject to control by the state; but the children themselves are subject to its control. If the pupil may fulfil its duty to the state by attending a parochial school it is difficult to see why the state may not fulfil its duty to the pupil by encouraging it 'by all suitable means.' The state is under a duty to ignore the child's creed, but not its need. It cannot control what one child may think, but it can and must do all it can to teach the child how to think. The state which allows the pupil to subscribe to any religious creed should not, because of his exercise of this right, proscribe him from benefits common to all.... The narrow construction contended for by complainants would compel the pupil to surrender use of his books when and because he elected to transfer from a public school to a qualified parochial school. Such would constitute a denial of equal privileges on sectarian grounds.... Complainant's prayer denied."

NEW YORK

Smith v. Donahue et al. 195 N.Y.S. 715.

Supreme Court, Appellate Division, Third Department, June 6, 1922.

The question is whether a law providing for free textbooks and supplies to all children attending the schools of the cities of the state would include pupils attending parochial schools. It was held not.

"The several schools there referred to, we think, considering all the provisions of the Education Law, are the public schools of the district under the control of the board of education. No other schools are 'schools of the school district.' There may be other schools in the district but they are not the schools of the district; the parochial schools are schools of the parish, restricted to the parish and there is nothing which implies that the books and supplies are to be furnished to the pupils as distinguished from the school. They are for the use of the pupils of the school district, to be furnished to the schools by the board of education, and they are the property of the board of education. A school district is a district of and for the public schools; it was organized as such and exists as such. The school is not the building and its equipment; it is the organization, the union of all the elements in the organization, to furnish education in some branch of learning - the arts or sciences or literature. It is the institution and the teachers and scholars together that make it up. The pupils are part of the school.... It seems to us to be giving a strained and unusual meaning to words if we hold that the books and the ordinary school supplies, when furnished for the use of pupils, is a furnishing to the pupils, and not a furnishing in aid or maintenance of a school of learning. It seems very plain that such a furnishing is at least indirectly in aid of the institution and that if not in actual violation of the words, it is in violation of the true intent and meaning, of the constitution and in consequence equally unconstitutional."

PART III. - TAX EXEMPTION FOR PRIVATE SCHOOLS

ALABAMA

Constitution of 1901, as amended:

Article IV, Sec. 91. The Legislature shall not tax the property, real or personal, of the State...nor lots in incorporated cities or towns, or within one mile of any city or town to the extent of one acre; nor lots one mile or more distant from such cities or towns, to the extent of five acres with the buildings thereon, when same are used exclusively for religious worship, for schools, or for purposes purely charitable.

State statute:

Alabama Code Annotated 1940. Title 51. Chapter 2. Section 2. Persons and property. The following property and persons shall be exempt from ad valorem taxation and none other: (a)....

All property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable, provided, however, property, real or personal, owned by any educational, religious or charitable institution, society or corporation, let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for education, religious, or charitable purposes....

ARIZONA

Constitution of 1912, as amended:

Article IX, Sec. 2. ... Property of educational, charitable, and religious associations or institutions not used or held for profit may be exempt from taxation by law.

State statute:

Arizona Code Annotated 1939. Title 73. Article 2. Sec. 73-201. All property subject to taxation - Exceptions.... Nothing herein shall be construed to require or permit double taxation. All property shall be subject to taxation, Except: ...

Second - Public libraries, colleges, school houses and other buildings used for Education, with their furniture, libraries, and equipments, and the lands thereto appurtenant and used therewith, so long as the same shall be used for the purpose of education and not used or held for profit, but when such property is private property, from which a rent or valuable consideration is received for its use, it shall be taxed as other property.

ARKANSAS

Constitution of 1874, as amended:

Article XVI, Sec. 5. ... Provided, further, that the following property shall be exempt from taxation: Public property used exclusively for public purposes; churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes; and buildings and grounds and materials used exclusively for public charity.

Article XVI, Sec. 6. All laws exempting property from taxation other than as provided in this Constitution shall be void.

CALIFORNIA

Constitution of 1879, as amended:

Article IX, Sec. 10. (refers to Leland Stanford Junior University) adopted in 1900.

Sec. 11 (refers to the California School of Mechanical Arts) adopted in 1900.

Sec. 12 (refers to California Academy of Sciences) adopted in 1904.

Sec. 13 (refers to Cogswell Polytechnical College) adopted in 1906.

Sec. 15 (refers to Huntington Library) adopted in 1930.

These institutions are to be exempt from taxation but "the Legislature may modify, suspend and revive at will the exemption from taxation herein given."

COLORADO

Constitution of 1876, as amended:

Article X, Sec. 5. Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law. (Adopted 1936)

DELAWARE

Constitution of 1897, as amended:

Article VIII, Sec. 1. ...but the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare.

Article X, Sec. 3. ...provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes.

FLORIDA

Constitution of 1887, as amended:

Article XVI, Sec. 16. The property of all corporations, except...shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.

GEORGIA

Constitution of 1877, as amended:

Article VII, Sec. II. Paragraph II. The General Assembly may, by law, exempt from taxation all public property...all buildings erected for and used as a college, incorporated academy, or other seminary of learning, and also all funds or property held or used as endowment by such colleges, incorporated academies or seminaries of learning, provided the same is not invested in real estate; and provided, further, that said exemption shall only apply to such colleges incorporated academies or other seminaries of learning as are open to the general public, provided, further...

State statute:

Georgia Code Annotated 1937 (permanent edition). Title 92. Chapter 92-2. Sec. 92-201. Property Exempt from taxation.

The following described property shall be exempt from taxation, to wit: ... All buildings erected for and used as a college, incorporated academy or other seminary of learning, and also all funds or property held or used as endowment by such colleges, incorporated academies, or seminaries of learning; Provided, the same is not invested in real estate; and Provided further, that said Exemption shall apply only to such Colleges, incorporated academies, or other seminaries of learning as are open to the general public; Provided further, that all endowments to institutions established for white people shall be limited to white people, and all endowments to institutions established for colored people shall be limited to colored people; the real and personal estate of any public library, and that of any other literary association, used by or connected with such library; all books, philosophical apparatus, paintings and statuary of any company or association kept in a public hall, and not held as merchandise or for purposes of sale or gain; Provided, the above described property so exempted is not used for purposes of private or corporate profit or income....

ILLINOIS

Constitution of 1870, as amended:

Article IX, Sec. 3. The property of the State...and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempt from taxation; but such exemption shall be only by general law.

INDIANA

Constitution of 1851, as amended:

Article X, Sec. 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and...excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

State statute:

Burns Indiana Statutes Annotated 1933. (Permanent Edition) Title 64. Chapter 2. Sec. 64-201. Exemptions enumerated. The following property shall be Exempt from taxation: ...

INDIANA (CONT.)

Fourth - The personal property and real estate of every manual labor school or of any technical high school, trade school or college incorporated within this State when used and actually occupied for the purpose for which such institution was incorporated; such real estate not to exceed eight hundred (800) acres in any one county of this state.

Fifth - Every building, or part thereof, used and set apart for educational, literary, scientific, religious or charitable purposes by any institution or by any individual or individuals, association or incorporation, provided the same is owned and actually occupied by the institution, individual, association or incorporation using it for such purpose or purposes, and every building owned and occupied, used and set apart for educational, literary, scientific, fraternal or charitable purposes, by any town, township, city or county, and the tract of land on which such building is situated, including the campus and athletic grounds of any educational institution not exceeding fifty (50) acres; also the lands purchased with the bona fide intention of erecting buildings for such use thereon, not exceeding forty (40) acres; also the personal property endowment funds, and interest thereon, belonging to any such institution or any town, township, city or county and connected with, used or set apart for any of the purposes aforesaid.

KANSAS

Constitution of 1861, as amended:

Article XI, Sec. 1. All property used exclusively for State, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and ...shall be exempted from taxation.

KENTUCKY

Constitution of 1891, as amended:

Sec. 170. There shall be exempted from taxation public property used for public purposes...institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education....

MASSACHUSETTS

State statute:

Annotated Laws of Massachusetts. Vol. 2. Chapter 59. Sec. 5. Certain Property and Polls Exempted. The following property and polls shall be exempt from taxation....

Of certain Institutions and Corporations; Exceptions - Third, Personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated in the commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase, except as follows:

(a) No Exemption if Income or Profits are Distributed, etc. - If any of the income or profits of the business of the institution or corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, its property shall not be exempt.

MASSACHUSETTS (CONT.)

(b) Wilful Omission to Bring in List Prevents Exemption - A corporation coming within the foregoing description shall not be exempt for any year in which it wilfully omits to bring into the assessors the list and statement required by section twenty-nine.

(c) Property Used for Care of Insane Not Exempt Unless One-Fourth Devoted to Charity, etc. - Land Not Exempt.

(d) Real Estate Acquired without Consent of City or Town, by Institution for Insane, Not Exempt.

MICHIGAN

State statute:

Michigan Statutes Annotated. Vol. 6. 1941 Cumulative Supplement. Title 7. Sec. 7.7. Real property exempted from property tax. The following real property shall be exempt from taxation; charitable, educational or scientific institutions; scout organizations. Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of World War Veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. Also charitable homes of fraternal or secret societies.

Also real estate (not to exceed 160 acres of land) owned by any boy or girl scout organization, while occupied by them solely for the purpose for which they were incorporated or established.

Sec. 7.9

Personal property exempted from property tax.

The following personal property shall be exempt from taxation, to-wit; charitable, educational and scientific institutions.

First - The personal property of benevolent, charitable, educational and scientific institutions incorporated under the laws of this state:

Provided, That such exemptions shall not apply to secret or fraternal societies, but the personal property of all charitable homes of such societies shall be exempt.

MINNESOTA

Constitution of 1857, as amended:

Article IX, Sec. 1. Taxes shall be uniform...but public burying grounds, public-school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches...shall be exempt from taxation....

MISSOURI

Constitution of 1875, as amended:

Article X, Sec. 6. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies; Provided, That such exemptions shall be only by general law.

State statute:

Missouri Statutes Annotated. (Permanent Edition) Vol. 12. Chapter 59. Sec. 9743. Exemptions therefrom. The following subjects are Exempt from taxation....

Sixth - Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools or for purposes purely charitable, shall be exempted from taxation for state, county or local purposes.

MONTANA

Constitution of 1889, as amended:

Article XII, Sec. 2. The property of the United States, the State...and public libraries shall be exempt from taxation; and such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual worship....

NEBRASKA

Constitution of 1875, as amended:

Article VIII, Sec. 2. The Legislature by general law may exempt property owned by and used exclusively for agricultural and horticultural societies, and property owned by and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user.... No property shall be exempt from taxation except as provided in this section.

NEVADA

Constitution of 1864, as amended:

Article X, Sec. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation...excepting such property as may be exempted by law for municipal, educational, literary, scientific, or other charitable purposes.

Article VIII, Sec. 2. All real property and possessory rights to the same, as well as personal property in the State, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; provided, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.

NEW JERSEY

State statute:

New Jersey Statutes Annotated 1941. Title 54. Article I, Sec. 54; 4-3.6 Exemption of property of educational, religious and charitable organizations. The following property shall be exempt from taxation under this chapter; all buildings actually used for colleges, schools, academies or seminaries; all buildings actually used for historical societies, associations or exhibitions, when owned by the state, county or any political subdivision thereof; all buildings actually and exclusively used for public libraries, religious worship or asylum or schools for feeble-minded or idiotic persons and children; all buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals; all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, or for religious, charitable or hospital purposes, or for one or more of such purposes; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; the building actually occupied as a parsonage by the officiating clergymen of any religious corporation of this state, to an amount not exceeding five thousand dollars; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above-mentioned and to no other purpose and does not exceed five acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above-mentioned; provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work, therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the building; provided, the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes.

The foregoing exemptions shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this state and authorized to carry out the purposes on account of which the exemption is claimed.

NEW MEXICO

Constitution of 1912, as amended:

Article VIII, Sec. 3. All property of the United States, the State...all property used for educational or charitable purposes, all cemeteries...shall be exempt from taxation.

State statute:

McKinneys Consolidated Laws of New York Annotated, as amended 1941. Book 59. Tax Law Article I. Section 4. Paragraph 6. The real property of a corporation or association organized exclusively for the moral or mental improvement of men and women, or for, religious, Bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, public playground, scientific, literary, bar association, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes.

But no such corporation or association shall be entitled to any such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one or more such purposes.

The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more such purposes and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association; or if such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more such purposes shall be erected upon said premises or some part thereof.

The use of any such real property as a polling place upon days of registration and election shall not be deemed to impair any exemption from taxation otherwise applicable thereto.

The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes but leased or otherwise used for other purposes, shall not be exempt, but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used and the remaining or other portion, to the extent of the value of such remaining or other portion, shall be subject to taxation....

No education corporation or association that holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of this section shall deny the use of its facilities to any person otherwise qualified, by reason of his race, color or religion.

a/ Article III, Sec. 8 of former New York Constitution read as follows: "The Legislature shall not pass a private or local bill in any of the following cases: granting to any person, association, firm or corporation, an exemption from taxation on real or personal property."

NORTH CAROLINA

Constitution of 1876, as amended:

Article V, Sec. 5. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes....

NORTH DAKOTA

Constitution of 1889, as amended:

Article XI, Sec. 176. The property of the United States and of the States...and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.

OKLAHOMA

Constitution of 1907, as amended:

Article V, Sec. 50. The Legislature shall pass no law exempting any property within this State from taxation except as otherwise provided in this Constitution.

Article X, Sec. 6. All property used for free public libraries, free museums, public cemeteries, property used exclusively for schools, colleges and all property used exclusively for religious and charitable purposes...shall be exempt from taxation.

OHIO

Constitution of 1851, as amended:

Article XII, Sec. 2. ...and without limiting the general power, subject to the provisions of article one of this Constitution [Bill of Rights], to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property... but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

PENNSYLVANIA

Constitution of 1874, as amended:

Article IX, Sec. 1. All taxes shall be uniform...and shall be levied and collected under general laws, but the General Assembly may, by general laws, exempt from taxation...actual places of worship...institutions of purely public charity....

SOUTH CAROLINA

Constitution of 1895, as amended:

Article X, Sec. 1. The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation...and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes....

Article X, Sec. 4. There shall be exempted from taxation all county, township and municipal property used exclusively for public purposes and not for revenue, and the property of all schools, colleges and institutions of learning, all charitable institutions in the nature of asylums...except where the profits of such institutions are applied to private uses; all public libraries, churches, parsonages and burying grounds; but the property of associations and societies, altho connected with charitable objects, shall not be exempt from State, county or municipal taxation: Provided, that as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, parsonages and burial grounds altho connected with charitable objects.

SOUTH DAKOTA

Constitution of 1889, as amended:

Article XI, Sec. 6. The Legislature shall, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious and charitable purposes....

TENNESSEE

Constitution of 1870, as amended:

Article II, Sec. 28. All property, real, personal or mixed, shall be taxed, but the Legislature may except such as may be...held and used for purposes purely religious, charitable, scientific, literary or educational....

TEXAS

Constitution of 1876, as amended:

Article VIII, Secs. 1 and 2. (dealing with exemptions) do not provide for usual exemptions of nonprofits.

UTAH

Constitution of 1895, as amended:

Article XIII, Sec. 2. The property of the United States, of the State...municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, and places of burial...shall be exempt from taxation.

VIRGINIA

Constitution of 1902, as amended:

Article XIII, Sec. 183. Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(a) (refers to public property)

(b) Buildings with land they actually occupy, and the furniture and furnishings therein and endowment funds lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship, or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(c) (refers to cemeteries)

(d) Property owned by public libraries, incorporated colleges or other incorporated institutions of learning, not conducted for profit, together with the endowment funds thereof not invested in real estate. But this provision shall apply only to property primarily used for literary, scientific or educational purposes or purposes incidental thereto....

(e) (f) (g) irrelevant

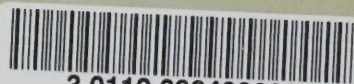
Except as to Class (a) above, general laws may be enacted restricting but not extending the above exemptions.

Whenever any building or land, or part thereof, mentioned in this section, and not belonging to the State, shall be leased or shall otherwise be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. But the General Assembly may provide for the partial taxation of property not exclusively used for the purposes herein named.

WYOMING

Constitution of 1889, as amended:

Article XV, Sec. 12. The property of the United States...municipal corporations and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, public cemeteries, shall be exempt from taxation, and such other property as the Legislature may by general law provide.



3 0112 098499020